Raymond Interior Systems *and* Southern California Painters and Allied Trades District Council No. 36, International Union of Painters and Allied Trades, AFL–CIO

United Brotherhood of Carpenters and Joiners of America, Local Union 1506 and Southern California Painters and Allied Trades District Council No. 36, International Union of Painters and Allied Trades, AFL–CIO and Southwest Regional Council of Carpenters, United Brotherhood of Carpenters and Joiners of America, Party in Interest. Cases 21–CA–37649 and Case 21–CB–14259

December 30, 2011

ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR RECONSIDERATION

BY CHAIRMAN PEARCE AND MEMBERS BECKER AND HAYES

On September 30, 2010, the National Labor Relations Board issued a Decision and Order in this proceeding.[1] The Board found, inter alia, that Respondent Raymond Interior Systems violated Section 8(a)(2) and (3) of the Act by unlawfully assisting Carpenters Local Union 1506 in obtaining authorization cards from Raymond's drywall finishing employees. The Board further found that Raymond violated Section 8(a)(2) by granting 9(a) recognition to the Carpenters as the drywall finishing employees' representative at a time when the Carpenters did not represent an uncoerced majority of those employees; that the Carpenters violated Section 8(b)(1)(A) by accepting that recognition; and that Raymond and the Carpenters violated Section 8(a)(3) and (b)(2), respectively, by maintaining and applying the Carpenters Union 2006–2010 master agreement, including its union-security provision, to the drywall finishing employees at a time when the Carpenters did not represent an uncoerced majority of those employees.

On October 27, 2010, Raymond filed a motion for reconsideration, and the Carpenters filed a notice of Joinder to that motion. Thereafter, the Acting General Counsel filed an opposition. On June 24, 2011, Raymond filed a notice of supplemental authority, the Acting General Counsel filed an opposition to the notice, and Charging Party Painters District Council No. 36 filed a response. For the reasons stated below, we grant the Respondents' motion in part, deny it in part, and modify the Board's Order accordingly.

Raymond asserts that the Board's Order is inappropriate insofar as it directs Raymond to provide employees with alternate benefits coverage equivalent to the coverage that its drywall finishing employees possessed under the Carpenters Union 2006–2010 master agreement.[2] We recognize that the Board has not been consistent in requiring that alternate benefits coverage be provided in remedying unlawful employer assistance to and recognition of a union.[3] The Board's most recent decision presenting the issue, however, did not order alternate benefits coverage. See *Garner/Morrison, LLC*, 356 NLRB No. 163 (2011). Consistent with *Garner/Morrison*, we find that alternate benefits coverage is not required to effectuate the key proscription in unlawful assistance and recognition cases: that an employer not recognize a union as a 9(a) representative of its employees unless and until an uncoerced majority of employees favors such representation. Accordingly, we modify the Board's Order to delete the alternate benefits provision,[4] and we substitute a new notice that comports with these modifications.[5]

[1] 355 NLRB No. 209. The Decision and Order incorporated by reference the prior decision reported at 354 NLRB No. 85 (2009). Member Hayes did not participate in either of those decisions, but he agrees with the disposition of the motion here.

[2] Par. A,2(c) of the Board's Order provides: "To the extent that coverage was provided under Carpenters Union plans, provide alternate benefits coverage equivalent to the coverage that its drywall finishing employees possessed under the Carpenters Union 2006–2010 master agreement, including pension coverage and medical, hospitalization, prescription drug, dental, optical, life, and other insurance benefits, and ensure that there be no lapse in coverage." 354 NLRB No. 85, slip op. at 2.

[3] Compare *Brooklyn Hospital Center*, 309 NLRB 1163, 1163–1164 (1992), enfd. sub nom. *Service Employees Local 144, v. NLRB*, 9 F.3d 218 (2d Cir. 1993); *Mego Corp.*, 254 NLRB 300, 301 (1981); *Hartz Mountain Corp.*, 228 NLRB 492, 493, 562 (1977), enfd. sub nom. *District 65, Distributive Workers of America v. NLRB*, 593 F.2d 1155 (D.C. Cir. 1978); with *Dairyland USA Corp.*, 347 NLRB 310, 314 (2006), enfd. sub nom. *NLRB v. Food & Commercial Workers Local 348-S,* 273 Fed.Appx. 40 (2d Cir. 2008); *Co-Op City*, 340 NLRB 35, 41 (2003); *Windsor Castle Health Care Facilities*, 310 NLRB 579, 593–595 (1993), enfd. as modified 13 F.3d 619 (2d Cir. 1994); *Duane Reade, Inc.*, 338 NLRB 943, 945 (2003), enfd. 99 Fed.Appx. 240 (D.C. Cir. 2004).

[4] We likewise modify par. A,1(b) of the Board's Order, consistent with that in *Garner/Morrison*, to direct Raymond to cease and desist from "[m]aintaining, enforcing, or giving effect to the Carpenters Union 2006–2010 master collective-bargaining agreement, including the union-security clause, so as to cover its drywall finishing employees, or any extensions, renewal, or modifications thereof, unless or until Respondent Carpenters Local Union 1506 has been certified by the Board as the exclusive collective-bargaining representative of those employees; provided that nothing in this Order shall require any changes in wages or other terms and conditions of employment that may have been established pursuant to said agreement."

[5] Contrary to Raymond's contention, the Board's Order should not be interpreted as requiring a Board certification of representative before

Raymond also argues that the Board erred in failing to decide whether the "Confidential Settlement Agreement" (CSA) reached between Raymond and the Carpenters 3 weeks before the unlawful assistance constituted a valid 8(f) agreement that was not invalidated by Raymond's subsequent acts of unlawful assistance. We deny this aspect of the motion, because a finding that the CSA constituted a valid 8(f) agreement would not affect our determination that Raymond, on October 2, 2006, unlawfully recognized the Carpenters as the 9(a) representative of its drywall finishing employees.

ORDER

The motion for reconsideration is granted in part and denied in part. Accordingly, the National Labor Relations Board affirms its original Order as modified below, and orders that the Respondents, Raymond Interior Systems, Orange and San Diego, California, its officers, agents, successors, and assigns; and United Brotherhood of Carpenters and Joiners of America, Local Union 1506, Los Angeles and Orange, California, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Delete paragraph A,2(c) and reletter the subsequent paragraphs.

2. Substitute the following for paragraph A,1(b).

"(b) Maintaining, enforcing, or giving effect to the Carpenters Union 2006–2010 master collective-bargaining agreement, including the union-security clause, so as to cover its drywall finishing employees, or any extensions, renewal, or modifications thereof, unless or until Respondent Carpenters Local Union 1506 has been certified by the Board as the exclusive collective-bargaining representative of those employees; provided that nothing in this Order shall require any changes in wages or other terms and conditions of employment that may have been established pursuant to said agreement."

Raymond may lawfully recognize the Carpenters (or any other labor organization) as its employees' 8(f) collective-bargaining representative.

3. Substitute the attached notices for those in the Board's original Decision and Order.

Dated, Washington, D.C. December 30, 2011

Mark Gaston Pearce, Chairman

Craig Becker, Member

Brian E. Hayes, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT recognize and bargain with Southwest Regional Council of Carpenters on behalf of its affiliated local unions, including Respondent Carpenters Local Union 1506, as the 9(a) collective-bargaining representative of our drywall finishing employees at a time when those unions do not represent an uncoerced majority of those employees.

WE WILL NOT maintain, enforce, or give effect to our Carpenters Union 2006–2010 master collective-bargaining agreement, including the union-security clause, so as to cover our drywall finishing employees, or any extensions, renewal, or modifications thereof, unless or until Respondent Carpenters Local Union 1506 has been

certified by the Board as the exclusive collective-bargaining representative of those employees; provided that nothing herein shall require any changes in wages or other terms and conditions of employment that may have been established pursuant to said agreement.

WE WILL NOT assist Respondent Carpenters Local Union 1506 in obtaining authorization cards by warning our drywall finishing employees that, if they did not sign with Respondent Carpenters Local Union 1506 that day, there would be no more work for them.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights set forth above.

WE WILL withdraw and withhold all recognition from Respondent Carpenters Local Union 1506 as the collective-bargaining representative of our drywall finishing employees unless and until it has been duly certified by the Board as the collective-bargaining representative of those employees.

WE WILL jointly and severally with Respondent Carpenters Local Union 1506, reimburse our past and present drywall finishing employees, who joined Respondent Carpenters Local Union 1506 on or after October 2, 2006, for any initiation fees, periodic dues, assessments, or any other moneys, which they may have paid or which may have been withheld from their pay pursuant to the Carpenters Union 2006–2010 master agreement, with interest.

RAYMOND INTERIOR SYSTEMS

APPENDIX B

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT accept assistance from Respondent Raymond in obtaining union authorization cards from Raymond's drywall finishing employees.

WE WILL NOT accept recognition from Respondent Raymond as the 9(a) collective-bargaining representative of our drywall finishing employees at a time when we do not represent an uncoerced majority of those employees.

WE WILL NOT maintain and enforce the Carpenters Union 2006–2010 master agreement, including the union-security clause, so as to cover Respondent Raymond's drywall finishing employees, and any extensions, renewal, or modifications thereof, unless and until we have been certified by the Board as the collective-bargaining representative of those employees.

WE WILL NOT fail to inform Respondent Raymond's drywall finishing employees, when we first seek to obligate them to pay dues and fees under a union-security clause, of their rights under *NLRB v. General Motors Corp.,* 373 U.S. 734 (1963), to be and remain nonmembers of Respondent Carpenters; and of the rights of nonmembers under *Communications Workers v. Beck,* 487 U.S. 735 (1988), to object to paying for union activities not germane to the Union's duties as collective-bargaining representative, and to obtain a reduction-in-dues and fees for such activities.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights set forth above.

WE WILL jointly and severally with Respondent Raymond, reimburse all of the latter's past and present drywall finishing employees, who joined Respondent Carpenters Local Union 1506 on or after October 2, 2006, for initiation fees, periodic dues, assessments, or any other moneys, which they may have paid or which may have been withheld from their pay pursuant to the Carpenters Union 2006–2010 master agreement, with interest.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1506